

Internal Revenue Service

Department of the Treasury

Date:

Employer Identification Number:

[REDACTED]

Form Number:

[REDACTED]

Tax Years Ending:

[REDACTED]

Person to Contact:

[REDACTED]

Contact Telephone Number:

[REDACTED]

Contact Person ID#:

[REDACTED]

91<sup>st</sup> Day:

**CERTIFIED MAIL – Return Receipt Requested**

[REDACTED]

Dear Applicant:

This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code as an organization described in Code section 501(c)(3). This determination is effective beginning on [REDACTED], the date of your incorporation.

Our adverse determination was made for the following reason(s):

You have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. You are organized and operated primarily to serve private interests rather than public interests. You are organized and operated for a substantial nonexempt purpose of providing benefits to your members and furthering private interests of your members, which is inconsistent with exemption under section 501(c)(3) of the Internal Revenue Code.

Contributions made to your organization are no longer deductible under Code section 170(c)(2) as charitable contributions by donors for purposes of computing taxable income for federal income tax purposes. See Rev. Proc. 82-39, 1982-2 C.B. 759, for rules concerning the deduction of contributions made to your organization between [REDACTED] and the date that public announcement is made in the Internal Revenue Bulletin, stating that contributions to your organization are no longer deductible.

[REDACTED]


You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, returns should be filed for the years indicated above. Processing of income tax returns and assessment of any taxes due will not be delayed in the event that you file a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

  
Appeals Team Manager

Internal Revenue Service

Department of the Treasury

PERSON TO CONTACT:

EMPLOYER IDENTIFICATION NUMBER:

CONTACT TELEPHONE NUMBER:

IN REPLY REFER TO:

DATE: DEC 28 2000

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

You were incorporated in [REDACTED] on [REDACTED] as [REDACTED]. On [REDACTED], you filed Form 1023 with the Internal Revenue Service, requesting tax exemption under Internal Revenue Code (Code) section 501(c)(3).

[REDACTED] is seeking foundation classification as an organization described in Code section 509(a)(2). Section 509(a)(2) organizations are defined as those organizations normally receiving not more than one-third of their support from gross investment income and more than one-third of their income from contributions, membership fees, and gross receipts from activities related to their exempt functions (subject to certain exceptions).

As provided in Form 1023, Part II, your proposed activities include the following:

- a) Provide a vehicle for people to cooperate in activities reflecting their mutual interest in family history and historical settings. Activities include research, data collection and organization, communication, education and publishing. All members may participate in the activities, although in practice a few key people including the President, Secretary-Treasurer, newsletter editor, and Webmaster volunteer much of the effort.
- b) The primary efforts of [REDACTED] are achieved through its quarterly newsletter, "[REDACTED]". The newsletters typically contain a mixture of current news of members, news of the organization, various research findings and reports, and queries about further research. Newsletters are distributed to members, non-members and selected libraries.
- c) [REDACTED] has created an electronic bulletin board that allows members and non-members to communicate genealogical interests and research, and also provide members with another way to communicate. Some Website files are restricted to member-only access, but most information is fully available to the general public.
- d) [REDACTED] is attempting to update and publish a revision to the primary reference book dealing with the families' history, "[REDACTED]".

You have indicated that [REDACTED] percent of your financial support comes from membership dues and the remaining [REDACTED] percent is derived from the sale of newsletter subscriptions and other publications. [REDACTED] has occasionally received small contributions, always from members, and never more than [REDACTED] percent of the annual budget.

The Bylaws of [REDACTED], revised [REDACTED], states membership shall be open to all persons, families and

organizations subscribing to its purposes and paying the annual dues.

The document labeled "Enclosure B" which is selected pages from a recent issue of the [REDACTED] newsletter makes reference to a possible family reunion in [REDACTED] in the summer of [REDACTED].

This document also included a research tip and an essay prepared by two family members titled "[REDACTED]". The essay focused on the life and family of [REDACTED].

The copy of the [REDACTED] newsletter "[REDACTED]" contains a Statement of Purpose, which was taken from the Articles of Incorporation, Article [REDACTED]. Said purposes are as follows:

- A. To encourage and carry out genealogical and historical research on the [REDACTED], and their allied families;
- B. To bring families together into reunions and other gatherings which serve to enhance relationships among [REDACTED] and their allied families;
- C. To educate and promote the meaning and appreciation of the [REDACTED] and their allied families' place in and contribution to their historical and cultural heritage;
- D. To otherwise support those efforts which further the aforementioned purposes of the [REDACTED]

The newsletter also contains essays about various divisions of the family, a description of the project to update the book [REDACTED], and a survey of the available genealogy Software used by members.

The newsletter also made reference to plans for a family reunion to take place in [REDACTED]. It also described the expanded "members only" area of the [REDACTED] Webpage.

The "members only" section of the Webpage contains the research aids and information for current members.

The Webpage also referred to plans for future family reunions and encouraged members to inform the organization of any other planned reunions and gatherings.

Your webpage also contains a members only section that contains research information and information for current members.

The purposes of the organization as stated on the webpage are as follows:

- To encourage and carryout genealogical and historical research on the [REDACTED] surname and their allied families.
- To bring families together into reunions and other gatherings which serve to enhance relationships among [REDACTED] and their allied families.
- To educate and promote the meaning and appreciation of the [REDACTED] roles and contributions to their historical and cultural heritage.

The activities and purposes of [REDACTED] serve to further the interests of the members of the organization and those of the various unrelated family lines sharing the [REDACTED] surname.

Law:

Code section 501(c)(3) provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Income Tax Regulations (Regs.) 1.501(c)(3)-1(a)(1) provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Regs. 1.501(c)(3)-1(b)(1) specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Regs. 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Regs. 1.501(c)(3)-1(d)(3)(i) defines educational as:

- (A) Instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (B) The instruction of the public on subjects useful to the individual and beneficial to the community.

Regs. 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes if more than an insubstantial part of its activities serve private interests.

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, would destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consist of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d. 632, (7th Cir. 1963).

In general, an organization that applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963), and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 203, 206, (8th Cir. 1963).

In Revenue Ruling 67-4, published in Cumulative Bulletin 1967-1, on page 121, the Service recognized four criteria indicating that publishing activities are directed to the attainment of purposes specified in section 501(c)(3). These criteria are: (1) The content of the publication must be "educational"; (2) The preparation of materials must follow methods generally accepted as "educational" in character; (3) The distribution of the materials must be necessary or valuable in achieving the organization's exempt purposes; and (4) The manner in which distribution is accomplished must be distinguishable from ordinary commercial publishing practices.

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In analyzing the factors which distinguish whether an organization's activities are "official" from ordinary commercial practices" to qualify as carrying out an exempt purpose, the following are considered:

Whether a purpose is educational has been interpreted by the courts to be more than simply providing instruction. The purpose must provide instruction or training, which is intended to improve and develop his capabilities or to instruct the public on subjects useful to the individual or to the community.

Regulations 1.501(c)(3)-1(c)(1) indicates that an organization will not be exempt under section 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, an organization whose operations result in private benefits that is more than insubstantial will not be considered to be carrying out an exempt purpose. This private benefit prohibition applies to all kinds of persons and groups, and is subject to the stricter inurement proscription.

Revenue Ruling 71-580, 1971-2 C.B. 235 holds that an organization formed by members of a denomination to compile genealogical research on the family in order to perform religious ordinances of the denomination to which the family members belong is exempt under section 501(c)(3).

Revenue Ruling 80-301, 1980-2 C.B. 180 holds that a genealogical society that (1) opens its files to persons in a particular area, (2) provides instruction in genealogical research techniques to its members, (3) conducts research on the general public, but does not research genealogies for its members, (4) conducts research and makes the results available to the state historical society, (5) provides materials for libraries and displays, and (6) promotes various other related activities for the public qualifies for exemption as an organization described in Code section 501(c)(3).

Revenue Ruling 80-302, 1980-2 C.B. 182 holds that an organization that (1) limits its membership to descendants of a particular family, (2) compiles family genealogical research data for use by its members, (3) presents the results of its research to the general public, (4) presents the results of its research to designated libraries, (5) publishes volumes of family history, and (6) promotes social activities for its members does not qualify for exemption under Code section 501(c)(3).

The Callaway Family Association, Inc. v. Commissioner, 71 T.C. 340 (1978) held that the family association conducted research for its members for the ultimate purpose of publishing a family history. The fact that the association's family genealogical activities were not insubstantial and were not in furtherance of an exempt purpose. Rather, they served the private interests of its members.

#### Taxpayer's Position:

It is the position of the organization, as stated in your letter dated [REDACTED], that it should qualify for exemption because it is analogous to a historical society that focuses on local history and therefore a large percentage of members will come from descendants of early settlers in the area. The organization claims that genealogy is but one aspect of history, and claims to be a family history association.

The current interest and policy of the organization, as stated in the [REDACTED] letter is as follows:

"It is the policy of the [REDACTED] that the organization, insofar as reasonably possible, shall restrict its activities to all participants who have interest in the [REDACTED] surname and its derivatives, without regard to the origin of that [REDACTED] family, or the place of origin, or the current geographical location of the participant."

The organization has initiated a project to update a published book detailing the history of the "██████" family published over 60 years ago. The current project is intended to correct earlier errors and provide a more comprehensive and more current history of the ██████ families.

The organization states the publishing of the family history may lead to the publication of family histories for other family groups... this was not the founding principle of the group nor is it the primary reason for its current existence and activities.

The organization claims that because it is an organization of many families or groups with a common surname and derivatives of that name, in diverse geographical locations it therefore serves a broad based public purpose.

Membership is not restricted to lineal or legal descendants of a particular family or families, but rather we encourage participation by all that subscribe to our purposes.

#### The Government's Position:

The activities and purposes of ██████ are similar in nature and scope to those described in Revenue Ruling 80-302, 1960-2 C.B. 182 and the court decisions in Callaway Family Association, Inc v. Commissioner, 71 T.C. 340 (1978) and Benjamin Price Genealogical Association v. United States, Civil No. 78-2117 (D.D.C., April 26, 1979). In each of these rulings it was determined that the activities of the organization seeking tax exemption served the private interests of its members rather than furthering an exempt purpose.

The activities of ██████ do not benefit the general public by providing instruction in genealogical research techniques as cited in Revenue Ruling 80-301, 1980-2 C.B. 180.

The organization is not compiling genealogical data for religious purposes as cited in Revenue Ruling 71-580, 1971-2 C.B. 235.

The activities of the ██████ are not in furtherance of an exempt purpose, but rather serve the private interests of its members. There are some educational activities conducted by the organization, however, the private benefit to the members is more than insubstantial. Therefore, exemption cannot be granted.

#### Conclusion:

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under Code section 170(c)(2).

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone who is not

One of your principal officers will represent you, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,



Director, Exempt Organizations

Enclosure: Publication 892

cc: State Attorney General 